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Commissioner

State of Georgia
Department of Revenue
Legal Affairs & Tax Policy
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Frank M. O'Connell
Director

NOTICE SUT 2015-002

RE: Adoption of Rule 560-12-2-.116 "Refunds under the Tourism Development Act."

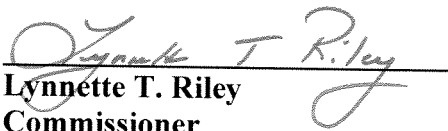
TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to adopt Rule 560-12-2-.116 "Refunds under the Tourism Development Act."

The Department of Revenue will consider the adoption of Rule 560-12-2-.116 "Refunds under the Tourism Development Act" at 10:00 a.m. on September 4, 2015 in Suite 15210 of the Department's headquarters at the below address.

The Department must receive all comments regarding the adoption of the above-referenced rule from interested persons and parties no later than 10:00 a.m. on September 4, 2015. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2015-002" on all comments.

Dated: July 29, 2015.


Lynnette T. Riley
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.116 Refunds under the Tourism Development Act.

The Georgia Department of Revenue proposes to adopt Rule 560-12-2-.116 “Refunds under the Tourism Development Act” pursuant to O.C.G.A. Title 48, Chapter 8, Article 6.

Paragraph (1) states the purpose of the Rule.

Paragraph (2) sets forth definitions.

Paragraph (3) prescribes rules for claiming refunds.

Paragraph (4) conditions receipt of a refund upon compliance with the Agreement, as defined in the Rule.

Paragraph (5) states the rights of successor companies.

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**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.116 Refunds under the Tourism Development Act.

(1) Purpose. This Rule addresses the refund of sales tax under the Tourism Development Act ("the Act") as passed in 2013.

(2) Definitions. For purposes of this Rule only:

(a) "Agreement" means an agreement for a Tourism Attraction Project between the Department of Community Affairs and an Approved Company pursuant to O.C.G.A. § 48-8-275.

(b) "Annual Sales and Use Tax" means remitted state sales and use taxes and remitted local sales and use taxes, subject to Paragraph (3)(g), that were generated by sales to the general public at the Approved Tourism Attraction during the calendar year immediately preceding the date of filing the Sales and Use Tax Refund claim.

(c) "Approved Company" means the entity that has submitted an application to undertake a Tourism Attraction Project that has been approved pursuant to O.C.G.A. § 48-8-274. For each Tourism Attraction Project, only one company may be approved under the Act.

(d) "Approved Costs" means:

1. For new Tourism Attractions:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen

- 32 in connection with the acquisition, construction, equipping, and
33 installation of a new Tourism Attraction Project;
- 34 (ii) The costs of acquiring real property or rights in real property
35 and any costs incidental thereto;
- 36 (iii) All costs for construction materials and equipment installed
37 at the new Tourism Attraction Project;
- 38 (iv) The cost of contract bonds and of insurance of all kinds that
39 may be required or necessary during the course of the acquisition,
40 construction, equipping, and installation of a new Tourism
41 Attraction Project which is not paid by the vendor, supplier,
42 deliveryman, or contractor or otherwise provided;
- 43 (v) All costs of architectural and engineering services, including
44 but not limited to estimates, plans and specifications, preliminary
45 investigations, and supervision of construction and installation, as
46 well as for the performance of all the duties required by or
47 consequent to the acquisition, construction, equipping, and
48 installation of a new Tourism Attraction Project;
- 49 (vi) All costs required to be paid under the terms of any contract
50 for the acquisition, construction, equipping, and installation of a
51 new Tourism Attraction Project;
- 52 (vii) All costs required for the installation of utilities, including
53 but not limited to water, sewer, sewage treatment, gas, electricity,
54 communications, and similar facilities; and off-site construction of
55 utility extensions if paid for by the Approved Company; and
- 56 (viii) All other costs comparable with those described in this
57 subparagraph; or
- 58 2. For existing Tourism Attractions, any Approved Costs
59 otherwise specified in Subparagraph 1 for new Tourism
60 Attractions; provided, however, that such costs are limited to the
61 expansion only of an existing Tourism Attraction and not the
62 renovation of an existing Tourism Attraction.

63 (e) "Approved Tourism Attraction" means a Project that was
64 approved pursuant to O.C.G.A. § 48-8-274 and that has since
65 opened to the public and become operational as a Tourism
66 Attraction.

67 (f) "Expansion" means the addition of equipment, facilities, or
68 real estate to an existing Tourism Attraction for the purpose of
69 increasing its size, scope, or visitor capacity.

70 (g) "Incremental Sales and Use Tax" means remitted state sales
71 and use taxes and remitted local sales and use taxes, subject to
72 Paragraph (3)(g), that were generated by sales to the general public
73 at the Approved Tourism Attraction from the date on which
74 construction of the expansion Project is completed through the end
75 of the calendar year immediately preceding the date of filing the
76 Incremental Sales and Use Tax Refund claim, less the remitted
77 state sales and use taxes and remitted local sales and use taxes,
78 subject to Paragraph (3)(g), that were generated by sales to the
79 general public at the Approved Tourism Attraction during the 12-
80 month period preceding the commencement of construction of the
81 expansion Project that corresponds to the time period for which
82 post-expansion sales tax was collected. Refer to Form ST-12
83 Tourism for examples demonstrating the calculation of
84 Incremental Sales and Use Tax.

85 (h) "Incremental Sales and Use Tax Refund" means the amount
86 equal to the lesser of the Incremental Sales and Use Tax or 2.5
87 percent of the total of all Approved Costs incurred at any time prior
88 to January 1 of the year during which the claim for the Incremental
89 Sales and Use Tax Refund is filed.

90 (i) "Local Sales and Use Tax" means any sales and use tax,
91 excluding the sales tax for educational purposes levied pursuant to
92 Part 2 of Article 3 of Title 48, Chapter 8 of the Official Code of
93 Georgia and Article VIII, Section VI, Paragraph IV of the Georgia
94 Constitution, that is levied and imposed in an area consisting of
95 less than the entire state, however authorized.

196 (j) "Renovation" means the restoration, rebuilding, redesign,
197 repair, or replacement of worn elements so that the functionality,
198 quality, or attractiveness of buildings or structures is equivalent to
199 a former state.

200 (k) "Sales and Use Tax Refund" means the amount equal to the
201 lesser of the Annual Sales and Use Tax or 2.5 percent of the total of
202 all Approved Costs incurred at any time prior to January 1 of the
203 year during which the claim for the Sales and Use Tax Refund is
204 filed.

205 (l) "State tax incentive" means a tax credit allowed under Chapter
206 7 of Title 48 or a state sales tax exemption allowed under Chapter
207 8, Article 1 of Title 48.

208 (m) "Tourism Attraction" means a cultural or historical site; a
209 recreation or entertainment facility; a convention hotel and
210 conference center; an automobile race track with other tourism
211 amenities; a golf course facility with other tourism amenities;
212 marinas and water parks with lodging and restaurant facilities
213 designed to attract tourists to the State of Georgia; or a Georgia
214 crafts and products center. The term excludes enterprises that are
215 primarily devoted to the retail sale of goods, shopping centers,
216 restaurants, or movie theaters.

217 (n) "Tourism Attraction Project" or "Project" means the
218 construction or expansion of a Tourism Attraction and includes the
219 real estate acquisition, including the acquisition of real estate by a
220 leasehold interest with a minimum term of 30 years; the
221 construction and equipping of a Tourism Attraction; the
222 construction and installation of improvements to facilities
223 necessary or desirable for the acquisition, construction, and
224 installation of a Tourism Attraction, including but not limited to
225 surveys; installation of utilities, which may include water, sewer,
226 sewage treatment, gas, electricity, communications, and similar
227 facilities; and off-site construction of utility extensions if paid for
228 by the Approved Company. The term does not include the
229 renovation of an existing Tourism Attraction.

130 **(3) Refund claims.**

131 **(a)** In the discretion of the commissioner of economic
132 development and the commissioner of community affairs, in
133 consideration of the execution of the Agreement and subject to the
134 Approved Company's compliance with the terms of the Agreement,
135 an Approved Company will be granted a Sales and Use Tax Refund
136 for new Projects or an Incremental Sales and Use Tax Refund for
137 expansions of existing Tourism Attractions.

138 **(b)** The Approved Company is not obligated to refund or
139 otherwise return any amount of this Sales and Use Tax Refund to
140 the persons from whom the sales and use tax was collected.

141 **(c)** The term of the Agreement granting a refund under the Act is
142 ten years, commencing on the date the Tourism Attraction opens
143 for business and begins to collect sales and use taxes or, for an
144 expansion, the date construction is complete.

145 **(d)** For each calendar year or partial calendar year occurring
146 during the term of the Agreement, an Approved Company must file
147 with the Department of Revenue a properly completed Claim for
148 Refund (Form ST-12 Tourism) by March 31 of the following year.

149 **(e)** No Sales and Use Tax Refund will be granted to an Approved
150 Company that is during a tax year simultaneously receiving any
151 other state tax incentive associated with any one Tourism
152 Attraction Project. A Sales and Use Tax Refund granted to an
153 Approved Company that is during a tax year simultaneously
154 receiving another state tax incentive is immediately due and
155 payable to the state.

156 **(f)** Any Sales and Use Tax Refund will be first applied to any
157 outstanding tax obligation of the Approved Company that is due
158 and payable to the state.

159 **(g)** By resolution and at the discretion of the county and city, if
160 any, where the Tourism Attraction Project is to be located, the local
161 sales and use tax may be refunded under the same terms and
162 conditions as any refund of state sales and use taxes.

163 **(h) Interest will not accrue on refunds made under the Tourism**
164 **Development Act.**

165 **(4) Compliance with the terms of the Agreement.** Receipt of a
166 refund is conditioned upon compliance with the Agreement
167 between the Approved Company and the commissioner of
168 economic development and the commissioner of community
169 affairs. In the event an Approved Company fails to abide by the
170 terms of the Agreement, then such Agreement is void and all sales
171 and use tax proceeds that were refunded are immediately due and
172 payable to the state.

173 **(5) Transfer of rights, duties, and obligations to successor**
174 **company.** An Approved Company may, in the discretion of the
175 Governor, transfer its rights, duties, and obligations under the
176 Agreement to a successor company if the successor company
177 meets the qualifications of an Approved Company; and, upon such
178 approval by the Governor, such successor Approved Company is
179 authorized to receive the Sales and Use Tax Refunds for the
180 remaining duration of the Agreement if it abides by the terms of
181 the Agreement.

182 Authority: O.C.G.A. Title 48, Chapter 8, Article 6.